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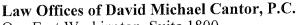
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DAVID MÌCHAEL CANTOR SBN# 12446 CHRISTINE WHALIN SBN# 24912

## IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO AMEND RULE 17.1(a) AND ADOPT FORM 28(a) IN RULE 41, ARIZONA RULES OF CRIMINAL PROCEDURE Supreme Court No. R-10-0037

Comment of the Law Office of David Michael Cantor on Petition to Amend Rule 17.1(a) and Adopt Form 28(a) in Rule 41, Arizona Rules of Criminal Procedure

The petition seeks to amend Rule 17.1(a), Ariz. R. Crim. P., to permit a defendant to enter a plea of guilty or no contest by mail in a limited jurisdiction court, under circumstances outlined in the proposed amendment, and to adopt Form 28(a) in conformity therewith.

The State Bar of Arizona filed a comment agreeing "in theory" with the proposed modification however suggesting some modifications in the current proposal. Specifically, the State Bar of Arizona suggests striking the work "undue" as it modifies "hardship" as well as deleting the categories set forth in subsections (i) through (iv).

The Law Office of David Michael Cantor joins in the comments by the State Bar of Arizona and also adds the following comments.

The Law Office of David Michael Cantor would amend the proposed Form 28(a) by removing the requirement that the defendant plead guilty to "each and every offense." Currently with telephonic change of plea proceedings the defendant or his/her lawyer, may negotiate with the prosecution for a modified offer and submit that offer to the court in place of

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the form. There is no reason a defendant who wishes to use a "mail in" plea should be required to waive their ability to negotiate in good faith with the prosecution.

As Rule 17.1(a)(3) is currently used, a defendant who lives outside of the County or State is allowed to appear telephonically to enter a guilty plea. If this defendant retained the services of an attorney, that attorney is able to work with the prosecutor in negotiating a modified plea offer that would not require the defendant to plead guilty to all of the charges. Once a plea offer is negotiated the defendant is required to obtain fingerprints and send those back to their counsel to provide to the court. Often times in DUI cases the defendant is also required to find a local jail facility that will house them for their jail sentence imposed by the Arizona court and also provide a copy of their acceptance letter prior to the telephonic change of plea. The defendant is then advised telephonically by the court of the legal ramifications of entering a guilty plea and enters the guilty plea on the record. This process has been in place and used for many years in almost all limited jurisdiction courts (i.e., Tempe City Court, West Mesa Justice Court, etc.,) and has been successful in facilitating the disposition of many misdemeanor cases such as DUI.

By requiring the defendant to plead guilty to each and every offense in the citation there will be few cases resolved by way of Rule 17(a)(4) as attorneys will continue to use 17(a)(3) in This will in effect make no change on the order to negotiate with the prosecution. overburdened courts as telephonic changes of plea still require court time be set aside to aid in the resolution of them.

As attorney's who practice often in the limited jurisdiction courts and utilize Rule 17.1(a)(3) regularly, we believe the addition of 17.1(a)(4) could be beneficial for the judicial

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system if implemented in an appropriate and easy to use fashion, similar to how the telephonic change of plea process is currently structured.

The Law Office of David Michael Cantor proposes that Rule 17.1(a)(4) mimic the current Rule 17.1(a)(3), allowing its use for any case and requiring fingerprints on all "mail in" plea agreements. With this in place it will increase the number of misdemeanor cases that are resolved, minimizing the courts time, leaving the court calendar available for cases that require actual appearances.

**RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of May, 2011.

David Michael Cantor #12446 Christine Whalin #24912

Law Offices of David Michael Cantor, P.C. One East Washington St, Suite 1800 Phoenix, Arizona 85004

Original filed with the Clerk of the Supreme Court of Arizona this 19<sup>th</sup> day of May, 2011,

By:

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